

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

JOSHUA A. BREWER,

Petitioner,

v.

CIVIL ACTION NO. 5:12-cv-00885

WARDEN, BECKLEY, WEST VIRGINIA,

Respondent.

**MEMORANDUM OPINION AND ORDER
ADOPTING THE PROPOSED FINDINGS AND RECOMMENDATION**

The Court has reviewed the Petitioner's *Petition for Writ of Habeas Corpus* 28 U.S.C. § 2241 ("Section 2241 Petition") (Document 1), brought on the grounds, *inter alia*, that the Bureau of Prisons has unlawfully computed his sentence.

By Standing Order (Document 4) entered on March 28, 2012, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On April 27, 2012, the Magistrate Judge directed the Respondent to respond to a Show Cause Order concerning Petitioner's argument relative to the computation of his jail credits (Document 5). Upon consideration of Respondent's May 24, 2012 Response to the Show Cause Order and the Petitioner's submissions, Magistrate Judge VanDervort, on April 12, 2013 submitted a Proposed Findings and Recommendation (Document 11). Magistrate Judge VanDervort found that Petitioner failed to properly exhaust his administrative remedies prior to initiating this action on March 23, 2012, commenced his federal sentence on August 1, 2012, and was not entitled to

prior custody credit toward his federal sentence. (Proposed Findings and Recommendation at 5-9). The Magistrate Judge also found that the Bureau of Prisons appropriately considered Petitioner's request for *nunc pro tunc* designation. (*Id.* at 10-11). As a result of these findings, the Magistrate Judge recommended that this Court dismiss Petitioner's Section 2241 Petition. Objections to the Proposed Findings and Recommendation were due by April 29, 2013.

To date, neither party has timely filed objections to the Magistrate Judge's Proposed Findings and Recommendation. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the Proposed Findings and Recommendation, and **ORDERS** that Petitioner's *Petition for Writ of Habeas Corpus* 28 U.S.C. § 2241 (Document 1) be **DISMISSED** and that this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: May 6, 2013



IRENE C. BERGER

UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA